(2016) 10 PAT CK 0066

PATNA HIGH COURT

Case No: Criminal Appeal (DB) No.577 of 2016.(Arising Out of PS.Case No.-60 Year-2008 Thana-Nawangar District-Buxar)

Bhagmani Devi — APPELLANT

Vs

State of Bihar — RESPONDENT

Date of Decision: Oct. 5, 2016

Acts Referred:

- Penal Code, 1860 (IPC) - Section 120(B), Section 201, Section 302, Section 304B, Section 34

Citation: (2016) 168 AIC 779 : (2017) 1 BLJud 102 : (2017) 1 ECrC 72

Hon'ble Judges: I.A. Ansari, CJ. and Dr. Ravi Ranjan, J.

Bench: Division Bench

Advocate: Mr. Abhimanyu Sharma, APP, for the Respondent; Mr. Anil Kumar Roy, Advocate, for the Appellants

Final Decision: Dismissed

Judgement

I.A. Ansari, C.J.(Oral) - Seven accused persons were tried by the learned Additional Sessions Judge-IV, Buxar, for offences alleged under Sections 302/34, 304(b)/34, 201/34 and 120(b) of the Indian Penal Code, 1860. All the accused-respondents were acquitted of all charges by the judgment and order, dated 02.03.2016, passed by the learned Additional Sessions Judge-IV, Buxar, in Sessions Trial No. 196 of 2011+ 90 of 2012, arising out of Nawanagar P.S. Case No. 60 of 2008. This appeal, under Section 372 of the Code of Criminal Procedure, 1973, is brought by the informant, in Nawanagar P.S. Case No. 60 of 2008, (hereinafter referred to as "the FIR"), against the acquittal of the said accused-respondents, namely, Sumudri Devi, Chandrama Prasad, Mahavir Sah, Krishna Devi, Rinku Devi, Birendra Sah and Janak Sah.

2. The case of the prosecution, as unfolded by the First Information Report, may, in brief, be described as under:

(i) Nawanagar P.S. Case No. 60 of 2008 came to be registered, under Sections 304(b), 120(b),201/34 of the Indian Penal Code, on the basis of a complaint filed on 14.03.2007 (hereinafter referred to as ''the second complaint''), wherein the complainant, namely, Bhagmani Devi, alleged that her daughter, namely, Priyanka Devi, had filed a complaint petition (hereinafter referred to as ''the first complaint''), under Sections 498A and 379 of the Indian Penal Code, which led to registration of Nawanagar P.S. Case No.46 of 2006. Later on, a compromise petition was filed, in the first complaint case, on 28.07.2006, and the complainant of the first complaint, Priyanka Devi, was taken to her matrimonial house by the accused persons on 04.12.2006. Priyanka Devi was presented before the Court, on 14.12.2006, by the accused persons and, thereafter, again, she was taken by the accused persons to her matrimonial house.

(ii) It is alleged that when the complainant of the second complaint, namely, Bhagmani Devi, went, on 28.06.2006, and, again, on 13.12.2006, along with her husband and her son, to the matrimonial house of Priyanka Devi to meet her daughter, the accused persons did not allow them to meet Priyanka Devi. Thereafter, Bhagmani Devi, along with her family members, went to the police station and they, accompanied by one Inspector, went to the matrimonial house of Priyanka Devi, but none of the accused persons were found there.

(iii) Bhagmani Devi, believing that her daughter had been killed by the accused persons, gave information to the Superintendent of Police, Sasaram, and filed a Complaint, on 14.03.2007, which gave rise to Navanagar P.S. Case No.60 of 2008, registered under Sections 304(b), 120(b), 201/34 of the Indian Penal Code.

(iv) Upon investigation, police submitted charge sheet, under Sections 304(b), 120(b), 201/34 of the Indian Penal Code, against the accused persons aforementioned and accordingly cognizance was taken and case was committed to the Court of Session for trial.

3. The learned Trial Court framed charges against the accused respondents under Sections 304(b)/34, 120(b), 201/34 and 302/34 of the Indian Penal Code and explained the charges so framed to accused respondents, who pleaded not guilty. The trial, accordingly, commenced. In support of their case, prosecution examined as many as 10 (ten) witnesses. The accused, in their examinations under Section 313 (1) (b) of the Code, denied that they had committed the offences, which were alleged to have been committed by them and that Priyanka Devi has been married to some other person by her parents and they have been implicated in this case due to previous enmity.

4. Mr. Anil Kumar Roy, learned counsel appearing for the appellant, assailing the judgment under appeal, has submitted that the learned trial Court has not appreciated the evidence correctly and, therefore, the impugned judgment needs to be interfered with. The grievance of the present appellant is that the learned trial

Court has erred in acquitting the accused-respondents in a hyper technical manner; whereas the deceased, Priyanka Devi, was allegedly last seen with the accused. It is contended that learned trial Court ought to have convicted the accused-respondents, because the accused must prove their innocence and, therefore, the accused-respondents are liable to be convicted of the offences punishable under Sections 304(b) read with Section 34, 120(b) and 201 read with Section 34 and Section 302 read with Section 34 of the Indian Penal Code.

5. The respondent Nos.2 to 8 were charged with dowry death, murder and other offences, allegedly committed between 28.06.2006 and 13.12.2006. Admittedly, the date of occurrence of the alleged murder of Priyanka Devi is not known to anyone. The point for determination, which arises, in the present appeal, is whether the learned trial Court has taken a reasonable view of evidence advanced at the trial, in light of the facts of this case, and whether there is any reason to reverse the view taken by the learned trial Court?

6. It is well settled principle of criminal jurisprudence that the presumption of innocence of the accused is further reinforced by his acquittal by trial Court and the findings of the trial Court, which had the advantage of seeing the witnesses and hearing their evidence, can be reversed only for very substantial and compelling reasons. (See: **Basayya Prabhayya Hallur v. State of Karnataka, (2009) 17 SCC 55**; **Ghurey Lal v. State of U.P., (2008) 10 SCC 450)**

7. The learned trial Court formed a clearly expressed opinion that the evidence against the accused persons was wholly unworthy of belief and acquitted all the accused on the ground that the prosecution could not prove its case beyond all reasonable doubts. It will be sufficient to cite one passage in the impugned judgment, wherein, the learned trial Judge observed:

"The evidence of the prosecution on the point of death of the victim is doubtful. No witness has come forward to show in unequivocal terms that Priyanka Devi has died From the above discussion it is clear that the case of prosecution is doubtful on the point of death of the victim"

8. On a bare perusal of the judgment under appeal, it transpires that the evidence of witnesses, examined by the prosecution, including the informant, are riddled. None of the ten witnesses, admittedly, witnessed any occurrence or seen the dead body of Priyanka Devi. Their statements are hearsay of what they had heard from the co-villagers and neighbours of the accused-respondents.

9. It needs to be carefully noted, while dealing with a piece of evidence, which is regarded as hearsay, that courts must bear in mind that there is a difference between factum of an information and truthfulness or veracity of such information. In a given case, if the object is to merely establish that a statement was made, it may not be hearsay, but if the object is to prove that what was stated was true, then, it may become hearsay. In the present case, since the name of the villager was not

disclosed, there is no doubt that the evidence given is hearsay even for the purpose that such a statement was made. The evidence, as regards death, is, thus, inadmissible and cannot be acted upon. Reference may be made, in this regard, to **Niroderanjan Acharjee v. State of Tripura, 2006 (3) GLT 751.**

10. We find that the judgment, under appeal, has elaborately dealt, and correctly so, with the evidence relied upon by the prosecution. None of the witnesses could say that he witnessed that Priyanka Devi was last with the accused. It would, thus, be impossible to have any confidence in the evidence adduced by the prosecution. In their examination, PW1 (Bhagmani Devi), the mother of Priyanka Devi, PW6 (Suraj Prasad Sah), the father of Priyanka Devi, PW3 (Durga Sah), PW4 (Krishna Kumar) and PW5 (Santosh Kumar Sah), all close relatives of Priyanka Devi, have averred in similar manner that after compromise, Priyanka went with her husband to the matrimonial home and, then, she was never found. These witnesses testified that villagers had informed them that the accused persons ganged up to murder Priyanka and dump her body. In the cross-examination, however, PW1 to PW6 could not even name the villager, who had informed them about the murder of Priyanka.

11. Significantly, PW8 (Vijay Sah) and PW9 (Tulsi Sah) testified that during the Makar Sankranti festival, the father of Priyanka Devi, came to the house of the accused person and took her to her parental house. These two prosecution witnesses have deposed that thereafter, they have not heard of Priyanka returning to the house of the accused person.

12. The police officer, i.e. PW7 (Hari Sankar Singh), who initiated the investigation after the registration of the police case, conceded, during cross examination, that nothing material came before him, which would indicate that Priyanka Devi had been done to death by the accused persons. PW10 (Ranjit Sinha), the investigating officer, who filed the charge sheet, has deposed that there was no credible evidence of death of Priyanka Devi and that he had filed the charge sheet against the accused person on being so instructed by senior officer.

13. The prosecution witnesses have presented contrary picture of the incident inasmuch as PW7 and PW8 have deposed that PW6 had taken Priyanka to the parental house, and thereafter, she disappeared; whereas PW1 to PW6 testified that Priyanka was with the accused persons, in their house, at the relevant time before she went missing. Moreover, the two investigating officers conceded that they did not find any material, which would indicate that the accused persons had caused the death of Priyanka.

14. Hence, we cannot hold that the learned trial Court has erred in giving the benefit of the doubt to the accused respondents. In our considered view, the learned trial Court has correctly taken all aspects of the evidence on record into consideration in arriving at conclusions, which it has reached.

15. In an appeal against acquittal, if two reasonable views are possible and the trial court has taken one view, then the High Court would not interfere even if the other view appears more appealing. In **Shyamal Sahu v. State of West Bengal (2014) 12 SCC 321**, the Supreme Court has observed that High Court is obliged to consider whether the trial court judgment suffers from such gross illegality so as to warrant interference. It was held that if two reasonable conclusions are possible on the basis of evidence on record, appellate court should not interfere with the acquittal recorded by the trial court.

16. It is the settled position of law that if prosecution, through its witnesses, present irreconcilable and mutually destructive versions of the incident, accused persons would be entitled to acquittal. In the case, at hand, the evidence of PW7, PW8 PW9 and PW10 is wholly contrary to the case forwarded and pleaded by the prosecution.

17. For the reasons given above, we hold that the guilt of the respondent-accused has not been established beyond all reasonable doubt.

18. In the result, this appeal is not admitted and is, accordingly, dismissed.